



1) Running down cause

2) Male adult cyclist aged 58 years in 1998

3) Cyclist motor vehicle accident

4) Injuries:

Fatal

5) Liability: 100% against the 1st and 2nd

plaintiff jointly and severally.

6) Quantum:

a) Law Reform Act

i) Pain and suffering Nil

ii) Loss of expectation of life Ksh.100,000/-

iii) Lost years Nil

Possible award

Ksh.3000/- x 2 x 12 x 2/3 Ksh.48,000/-

b) Fatal Accidents Act

i) Loss for dependancy Nil

c) Special Damages Nil

Total Ksh.100,000/-7)

Case Law -Nil

8) Advocates

M. Kinuthia advocate for the plaintiff

No appearance for the defendants

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MONICA MUTHONI MWANGA

(Administrator of the estate of

WILLIAM MWANGINJOROGE (DECEASED) ..... PLAINTIFF

VERSUS

PETERSON WANJOHI & ANOTHER ..... DEFENDANTS

JUDGMENT

On the day set for hearing and the case called out the defendant and their advocate being duly served were absent. The proceedings of this case continued under Order 9b r 3(a) CPR. 1)

Facts of the case

PW2, an employee of the deceased, as an assistant in the deceased food business left early in the morning of the 23rd April 1998 (6.00 am.) together with the deceased to do some shopping. His task at the food business was to boil the heads of cows as a delicacy. The two were going to the early market to shop.

Both travelled on one bicycle. The deceased rode the bicycle whilst PW2 was his pillion passenger. They approached a bridge. The traffic was long. The deceased rode the bicycle on the right side of the road off the tarmac.

The vehicle Reg. No. KAA 413F came from behind and knocked them. This vehicle was owned by the 2nd defendant and driven by the 1st defendant as his agent and or servant.

The said vehicle was also driven off the road. The particulars of negligence disclosed that the vehicle was driven without due care or attention and was at an excessive speed. The driver failed to swerve or avoid the accident.

The deceased died as a result of the accident whilst PW2 lost consciousness and was rushed to the hospital for treatment and was admitted for two weeks.

The widow to the deceased sued the two defendants in negligence and claimed damages.

II Liability

The plaintiff claimed that the defendant No.1 was negligent as he drove the vehicle.

The two defendants filed a joint defence and denied the allegations. They attributed negligence on the part of the deceased because he was:-

- a) Cycling on a main road
- b) Cycling on the middle of the road and on the path of the defendants vehicle
- c) Failing to have a due regard to his safety.
- d) Failing to . . . swerve . . . or control his bicycle.
- e) Cycling in a zig zag manner

f) Failing to keep a proper look out

g) Failing to respect the high way code.

The defendants, as stated earlier did not attend to the trial. No evidence was therefore led on the above particulars of negligence on the part to the deceased.

PW2 on the other hand stated that they were cycling off the road and not on the road due to the heavy traffic in the morning. It was the defendants vehicle that left the road and knocked them from behind.

I find that the defendant No.1 was negligent in the manner that he drove and thus caused the accident that resulted to the death of the deceased.

### III) Quantum

a) Law Reform Act

i) Pain and suffering

I have no evidence of the time that the deceased died. I make no award. The death certificate indicates the place of death as being the scene of accident.

ii) Loss of expectation of life.

I award                    Ksh.100,000/-

iii) Lost years.

The advocate referred to me no authorities in support of quantum.

The deceased was aged 58 years old and was well past his retirement age of 55 years as a conventional age of retirement. He was though working as a self employed person. I would have allowed 2 years as a multiplier and the multiplicand as Ksh,3,000/- being the minimum wage.

There was no evidence deduced by the plaintiff nor PW2 of the amount of income the deceased earned per month or per year.

This would have been over come if there was some audit report on the business he ran to give an indication of the sum given or income earned

I would have made no award under this head. If I had been asked to consider a figure it would have possibly been  $Ksh.3,000/- \times 2 \times 12 \times 2/3 = Ksh.48,000/-$

b) Fatal accident Act

a) Laws of dependency

I would not have made an award on this due to the above reasons.

Further the plaint reflects there were 3 children of the deceased This would have been proved if there was proof of birth certificates of the children. There was none and I make no award.

C) Special Damages

The plaintiff claimed a sum of Ksh.10,920/-. I have no evidence to show that this was incurred. I hereby dismiss this claim.

I accordingly enter judgment on the proved sum.

In Summary

1) Cyclist male adult aged 58 years in 1998

2) Cyclist/Motor vehicle accident

3) Injuries Fatal

4) Quantum:

1) Law Reform Act

- |                                 |               |
|---------------------------------|---------------|
| i) Pain and suffering           | Nil           |
| ii) Loss of expectation of life | Ksh.100,000/- |
| iii) Lost years                 | Nil           |

Possible award

3,000/- x 2 years  $12 \times \frac{2}{3}$  Ksh.48,000/-

II) Fatal Accidents Act

- |                       |     |
|-----------------------|-----|
| i) Loss of dependancy | Nil |
|-----------------------|-----|

III) Special Damages Nil\_\_\_\_\_

Ksh.100,000/-

I award the cost of this suit to the plaintiff. I award the interest of this suit from the date of this judgment.

Dated this 15th day of July, 2004 at Nairobi.

M.A. Ag'awa

Judge

Mwicigi Kinuthia & Co. Advocates for the plaintiff

Mr. Mbure & Co. Advocates for the defendant